PT 98-25
Tax Type: PROPERTY TAX
Issue: Charitable Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

THE THRESHOLDS, APPLICANT	)	**No. 94-16-1669**
	)	**Real Estate Tax Exemption for 1994 Assessment Year**
v.	)	**P.I.N: 16-08-402-009**
	)	**Cook County Parcel**
ILLINOIS DEPARTMENT OF REVENUE	)	**Alan I. Marcus, Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

APPEARANCE: Mr. Bennett P. Applegate of Schiff, Hardin & Waite on behalf of The Thresholds.

SYNOPSIS: This proceeding raises the following issues: first, whether real estate identified by Cook County Parcel Index Number 14-08-411-012, (hereinafter referred to as the "subject property" or the "subject parcel") qualifies for exemption under Public Act 88-660, passed by the General Assembly on June 30, 1994 and effective September 16, 1994; and if it does not, whether said parcel satisfies the ownership and use requirements necessary to obtain exemption from 1994 real estate taxes under 35 **ILCS** 200/15-65.[1] In relevant part, that statute provides as follows:

> All property of the following is exempt [from real estate taxation] when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:
>
> (a) institutions of public charity.

The General Assembly amended Section 200/15-65 via enactment of Public Act 88-660. This provision, effective September 16, 1994, provides, in relevant part, that property otherwise qualifying for exemption under Section 200-15/65 shall not lose its exemption because the legal title is held:

> … (ii) by an entity that is organized as a partnership, in which the charitable organization, or an affiliate or subsidiary of the charitable organization, is a general partner, for the purposes of owning and operating a residential rental property that has received an allocation of Low Income Housing Tax Credits for 100% of the dwelling units under Section 42 of the Internal Revenue Code of 1986.[2]

The controversy arises as follows:

On June, 1995, the Thresholds (hereinafter the "applicant") filed a Real Estate Exemption Complaint with the Cook County Board of (Tax) Appeals (hereinafter the "Board") (Dept. Group. Ex. No. 1). The Board reviewed applicant's complaint and recommended to the

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1. In People ex. rel. Bracher v. Salvation Army, 305 Ill. 545 (1922), the Illinois Supreme Court held that the issue of property tax exemption necessarily depends on the statutory provisions in force during the time for which the exemption is claimed. This applicant seeks exemption from 1994 real estate taxes. Therefore, the applicable provisions are those found in the Property Tax Code, 35 **ILCS** 200/1 *et seq*.

2. 26 U.S.C.A § 42.

Illinois Department of Revenue (hereinafter the "Department") that the requested exemption be denied. *Id*.

The Department later accepted the above recommendation by issuing a certificate finding that the subject property was not in exempt ownership. (Dept. Group Ex. No. 2). Applicant subsequently filed a timely request for hearing as to this denial (Dept. Ex. No. 3) and thereafter presented evidence at a formal administrative hearing. Following submission of all evidence and a careful review of the record, I recommend that the subject property not be exempt from 1994 real estate taxes.

<u>FINDINGS OF FACT</u>:

1. The Department's jurisdiction over this matter and its position therein, namely that the subject parcel was not in exempt ownership during 1994, is established by the admission into evidence of Dept. Group Ex. No. 1 and Dept. Ex. No. 2.
2. The subject parcel is located at 334-344 North Menard, Chicago, IL. It is situated on a lot measuring 45.6' x 150.11' and improved with one 6,750 square foot building. Dept. Group Ex. No. 1, Document A.
3. The building has four stories but no basement. It was in a state of complete disrepair when applicant acquired title to the subject property via a quitclaim deed dated April 23, 1994. Applicant Ex. No. 11; Tr. pp. 18, 27.
4. The building remained in disrepair while applicant retained title thereto. Applicant transferred title to Menard Limited Partnership (hereinafter "MLP") through a quitclaim deed dated June 29, 1994. Applicant Ex. No. 8; Tr. pp. 19-20.

5. MLP was formed pursuant to an agreement of limited partnership on March 15, 1994. Although applicant did not submit the limited partnership agreement into evidence, an Independent Auditor's Report indicate that applicant formed MLP for purposes of rehabilitating the subject property and operating low income rental units therein. Applicant Ex. No. 5.

6. The Independent Auditor's Report further divulges that applicant is the controlling entity of MLP's general partner and therefore responsible for guaranteeing the deposit of funds necessary to cover any development cost overruns, operating deficits or reduced income tax benefits. *Id*.

7. MLP's Certificate of Limited Partnership indicates that its general partner is Menard Apartments Corporation (hereinafter "Menard"). Applicant Ex. No. 7.

8. Applicant did not submit Menard's organizational documents into evidence. However, stock certificates indicate that applicant is the parent corporation of, and owns 100% of the shares in, Menard. Applicant Ex. No. 6; Tr. p. 16.

9. MLP's Certificate of Limited Partnership does not divulge the identity of the limited partner(s). It does nevertheless contain the following statement of partners' membership and distribution rights:

> After the withdrawing Limited Partner has fulfilled its complete obligation to make capital contributions to the Partnership, it shall be permitted to withdraw from the partnership pursuant to the provisions of the Revised Uniform Limited Partnership Act (the "Act"). The General Partner may withdraw, or be withdrawn from the partnership pursuant to Section 402 of the Act. Distributions shall be as follows:

General Partner	99%
Limited Partner	1%

Applicant Ex. No. 7.

10. Pursuant to the Low Income Housing Tax Credit Program, (hereinafter the "Program"), MLP received an allocation of Low-Income Housing Credits for 100% of units located within the subject property on December 31, 1994. Applicant Ex. No. 10.

11. The Program originated in Section 42 of the Internal Revenue Code, 26 USC §42 (hereinafter the "Code"). Congress intended the tax credits provided in Section 42 of the Code to induce private entities to construct or rehabilitate housing for low and moderate income persons. Administrative Notice.

12. Each state is allocated approximately $1.25 in tax credits per person of population in the state for purposes of the Program. The credits must be allocated. Under Section 42(m)(1)(B)(iii) of the Code, each state designates an agency to allocate and monitor the credits. *Id*.

13. The agency responsible for performing these functions throughout the City of Chicago is the City of Chicago Department of Housing. Applicant Ex. No. 10.

14. Each entity receiving tax credits under the Program receives the credits for a period of ten years, but must set aside units for low and moderate income tenants and are subject to rent restrictions for a period of 15 years. Administrative Notice.

15. The certification (IRS form 8609) pertaining to MLP's allocation indicates that the subject property was not placed in service until January 1, 1995. Applicant Ex. No. 10.

16. The subject property was not actually used for low-income housing during the 1994 assessment year because it was in a dilapidated condition, and therefore not suitable for that purpose, until it was renovated. Tr. pp. 27, 31.

17. Applicant began planning these renovations in 1994. Its plans included hiring an architect, working on the low-income housing tax credit application, applying to the Illinois Housing Development Authority (hereinafter the "Authority") for funds, working with the City of Chicago to prepare management or tenant selection plans, undertaking an affirmative marketing effort which reached out to shelters or other agencies that serve the low-income or homeless population and beginning negotiations for operating funds with the Illinois Department of Mental Health. Tr. pp. 28, 31-34.

18. Actual renovations began on or about June 30, 1994. They continued for the ensuing nine months and included emptying the building of any holdover tenants, reconfiguring the existing interior space on the first floor, taking down and replacing the existing interior walls, putting in a new electrical system and completely supplanting the ventilation, air conditioning, heating and other interior maintenance systems. Dept. Group Ex. No. 1; Tr. pp. 28 - 32.

19. Applicant obtained funds for these renovations from the Authority. It also procured funding for this project from low-income housing tax credits and a rental subsidy from the Department of Housing and Urban Development. Tr. p. 26.

20. Low income tenants did not actually begin occupying the building until after the renovations were completed sometime in March of 1995. Tr. pp. 31 - 32.

21. Applicant was incorporated under the General Not For Profit Corporation Act of Illinois on May 2, 1963. Its amended by-laws indicate that applicant's organizational purposes are: (1) to assist former patients of public and private mental hospitals and other persons who are recovering from or affected by mental illness to re-establish themselves in the community; and (2) to operate, create, foster, encourage and promote appropriate facilities for this purpose. Applicant Ex. Nos. 1 and 2.

22. Applicant's by-laws also provide, *inter alia*, that: (1) no part of the income, earnings or property of the corporation shall inure to the benefit of or be distributed to any member, director, officer or other private individual (other than in furtherance of the above-stated organizational purposes); (2) applicant shall not devote any substantial part of its activities to carrying on propaganda or otherwise attempting to influence legislation or participating in, or intervening in, any political campaign on behalf of any candidate for public office; (3) applicant shall not conduct its activities with a view to profit; (4) applicant's daily business affairs shall be managed by a Board of Directors, which shall have between 3 and 45 individual directors that are in turn divided into two classes for purposes of election to office; (5) the directors shall not be compensated for their services but may be reimbursed for expenses incurred in the performance of their duties; (6) the corporate officers shall include a president, one or more vice-presidents, a secretary and a treasurer; (7) the officers shall not be compensated for their services but may be reimbursed for expenses incurred in the performance of their

duties; and (8) applicant's fiscal year shall begin July 1 of each calendar year and end on the following June 30 thereof. Applicant Ex. No. 2.

23. Applicant obtained an exemption from federal income tax on March 10, 1965. The Internal Revenue Service based this exemption on its conclusion that applicant qualified as an organization described in Section 501(c)(3) of the Internal Revenue Code. Applicant Ex. No. 3.

24. Applicant's exemption from federal income tax remained in effect throughout the 1994 assessment year. Tr. p. 11.

25. Applicant has no capital stock or shareholders. It does not pay dividends to any individuals associated with its enterprise. Applicant Ex. No. 4; Tr. p. 14.

26. Applicant obtained revenue from the following sources during the fiscal year beginning July 1, 1994 and ending June 30, 1995:

SOURCE	**AMOUNT**	**% of Total**[3]
Contributions, Gifts, etc.	$ 19,319,104.00	90%
Program Service Revenue	$ 1,889,157.00	9%
Interest on Savings, etc.	$ 286,961.00	1%
Total	**$ 21,495,222.00**	

Applicant Ex. No. 4.

27. Contribution revenue ($19,319,104.00) consisted of $1,377,921.00 (or 7%) in direct public support and $17,941,183.00 (or 93%) in governmental grants. *Id.*

28. Direct public support ($1,377,921.00) consisted of the following: (1) $344,293.00 (or 25%) in individual contributions; (2) $212,654.00 (or 15%) in board member

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3. All percentages shown herein are approximations derived by dividing the category of income or expense (e.g. Contributions, etc.) by the appropriate total. Thus, for example, $19,319,104.00/$21,495,222.00 = .8988 (rounded to 4 places past the decimal) or approximately 90%.

contributions; (3) $419,876.00 (or 30%) in contributions from foundations, various unspecified corporations and other unidentified organizations; (4) $190,040.00 (or 14%) in unspecified bequests and $211,058.00 (or 15%) from unspecified net benefit revenue. Applicant Ex. No. 14.

29. Revenues attributable to governmental sources ($17,941,183.00) consisted of the following: (1) $12,065,029.00 (or 67%) from the Illinois Department of Mental Health and Developmental Disabilities; (2) $919,056.00 (or 5%) from the Illinois Department of Rehabilitation Services; (3) $79,087.00 (or <1%) from the Illinois Department of Public Aid; (4) $270,333.00 (or 1%) from Medicare/Medicaid; (5) $647,343.00 (or 4%) from Medicaid rehab option; (6) $677,936.00 (or 4%) from the United States Department of Education; (7) $887,366.00 (or 5%) from local government income; (8) $391,068.00 (or 2%) from various boards of education; (9) $1,650,305.00 (or 10%) from the Illinois Department of Children and Family Services; (10) $350,265.00 (or 2%) in unexplained and unspecified "LAN Income" and (11) $3,395.00 (or <1%) in miscellaneous government income. *Id*.

30. Applicant's expenses for the fiscal year July 1, 1994 through June 30, 1995 were as follows:

SOURCE	AMOUNT[4]	% of Total
Program Services	$ 17,936,919.00	86.4%
Management and General	$ 2,542,037.00	12.2%
Fundraising	$ 282,311.00	1.4%
Total	**$ 20,761,267.00**	

Id.

31. Program service expenses ($17,936,919.00) were apportioned as follows: (1) $5,474,823.00 (or 30.5%) on vocational and social rehabilitation programs designed to provide former mental patients with opportunities to re-establish themselves within the community via work and social training; (2) $6,107,214.00 (or 34%) on programs geared toward helping former mental patients avoid and/or prevent re-hospitalization; (3) $5,136,595.00 (or 29%) on programs intended to afford former mental patients the opportunity to have independent housing during their rehabilitation process; (4) $1,017,704.00 (or 6%) on research projects that applicant undertook to evaluate, develop, and disseminate information relative to former mental patients and others undergoing psychiatric care; (5) $66,091.00 (or <1%) on academic preparation and (6) $134,492 (or 1%) on training. Applicant Ex. No. 4, Tr. p. 15.

32. Applicant services approximately 3,000 persons in a given year. Many of these clients are homeless. Others have no income or otherwise satisfy applicable federal guidelines for occupancy in low-income housing projects. Tr. pp. 25-26.

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4. For detailed breakdowns of the exact expenditures involved in the various subgroups (i.e. other salaries and wages) that comprise each of the three expense categories, *See*, Applicant Ex. No. 4.

33. Applicant operates approximately 30 facilities in the City of Chicago. While applicant did not submit any affirmative evidence establishing whether or not any of these facilities were exempt from real estate taxes during 1994, I take administrative notice of the ensuing cases, wherein the Department has determined (without administrative hearing) that the following parcels qualified for exemption under the applicable provisions pertaining to "institutions of public charity[:]" (1) 93-56-00066, wherein the Department exempted McHenry County Parcel Index Number 13-05-329-011-0041; (2) 94-16-01497, wherein the Department exempted Cook County Parcel Index Number 20-04-326-032; and (3) 96-16-00204, wherein the Department exempted Cook County Parcel Index Number 14-05-317-001.

34. I further take administrative notice of the Recommendation for Disposition in Departmental Docket Numbers 91-16-831, 832 and 833, wherein it was concluded that applicant qualified as an "institution of public charity" under the relevant statute. This Recommendation further suggested that that all but one of the parcels at issue therein be exempt from real estate taxation for the entire 1991 assessment year and that the remaining parcel be exempt for 65% thereof.[5]

35. Applicant's facilities offer residential, vocational and other services (including psychotherapy and medication) to persons with psychiatric disabilities. It does not base the allocation of these or any other services it provides on an individual's

5. The properties recommended for a full year's exemption were Cook County Parcel Index Numbers 20-03-220-039, 20-03-220-040, 20-03-220-041, 20-23-226-012 and 20-23-226-013. The property recommended for a partial year's exemption was Cook County Parcel Index Number 16-02-207-032, which the Recommendation found lacking in exempt use prior to May 7, 1991.

capacity to pay. Applicant also does not refuse occupancy based on this consideration or vary the desirability of accommodations according to same. Tr. pp. 23, 25-26.

CONCLUSIONS OF LAW:

An examination of the record establishes that this applicant has not submitted evidence and argument sufficient to warrant exempting the subject parcel from 1994 real estate taxes. Accordingly, under the reasoning given below, the Department's determinations that said parcel does not qualify for exemption under Public Act 88-660 and 35 **ILCS** 200/15-65 should be affirmed. In support thereof, I make the following conclusions:

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

> The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The power of the General Assembly granted by the Illinois Constitution operates as a limit on the power of the General Assembly to exempt property from taxation. The General Assembly may not broaden or enlarge the tax exemptions permitted by the Constitution or grant exemptions other than those authorized by the Constitution. Board of Certified Safety Professionals v. Johnson, 112 Ill.2d 542 (1986). Furthermore, Article IX, Section 6 is not a self-executing provision. Rather, it merely authorizes the General Assembly to confer tax exemptions within the limitations imposed by the Constitution. Locust Grove Cemetery of Philo, Illinois v. Rose, 16 Ill.2d 132 (1959). Moreover, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions or limitations on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App.3d 497 (1st Dist. 1983).

Pursuant to its Constitutional mandate, the General Assembly enacted the Property Tax Code, 35 **ILCS** 200/1 *et seq*. The omnibus provisions of that statute which govern the instant proceeding are found in Section 200/15-65. In relevant part, that provision states as follows:

> All property of the following is exempt [from real estate taxation] when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:
>
> (a) institutions of public charity.

The General Assembly amended Section 200/15-65 via enactment of Public Act 88-660. This provision, effective September 16, 1994, provides, in relevant part, that property otherwise qualifying for exemption under Section 200-15/65 shall not lose its exemption because the legal title is held:

> … (ii) by an entity that is organized as a partnership, in which the charitable organization, or an affiliate or subsidiary of the charitable organization, is a general partner, for the purposes of owning and operating a residential rental property that has received an allocation of Low Income Housing Tax Credits for 100% of the dwelling units under Section 42 of the Internal Revenue Code of 1986.[6]

Here, applicant posits that this case should be decided under the above amendment. However, this argument fails to recognize that "[t]he status of the property for taxation and the liability to taxation [is] fixed on [January 1 of each assessment year], and property subject to taxation on assessment day in any year is liable for the taxes of that year even though it may subsequently, during that [any given] year, become exempt from taxation." Forest Preserve of

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6. 26 U.S.C.A. § 42.

DuPage County v. Department of Revenue, *et al*, 266 Ill. App.3d 264, 274 (2^{nd} Dist. 1994) (citing People ex. rel. Kassabaum v. Hopkins, 106 Ill.2d 473, 476-77 (1985)).[7]

Public Act 88-660 did not become effective until *after* January 1, 1994. Consequently, the above principle mandates that the amendment does not govern whether the subject parcels are exempt from that year's real estate taxes. Therefore, said inquiry must be decided according to whether this applicant satisfies the statutory and common law requirements applicable to "institutions of public charity."

An analysis of that issue begins with recognition of the following rules of statutory construction, which our courts have consistently applied in property tax cases: first, a statute exempting property or an entity from taxation must be strictly construed against exemption, with all facts construed and debatable questions resolved in favor of taxation (People ex. rel. Nordlund v. Home for the Aged, 40 Ill.2d 91 (1968)); second, the party seeking exemption bears the burden of proof (Metropolitan Sanitary District of Greater Chicago v. Rosewell, 133 Ill.

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7. It should be noted that this situation stands in contrast to situations wherein the applicant obtains exemption from real estate taxes for part of an assessment year based on a change in ownership or use. These situations arise pursuant to Section 200/9-185 of the Property Tax Code, the relevant portion of which states that:

> The purchaser of property on January 1 shall be considered the owner [who is therefore liable for any taxes due] on that day. However, when a fee simple title or lesser interest in property is purchased, granted, taken or otherwise transferred for a use exempt from taxation under this Code, that property shall be exempt from the date of the right of possession, except that property acquired by condemnation is exempt as of the date the condemnation petition is filed. Whenever a fee simple title or lesser interest in property is purchased, granted taken or otherwise transferred from a use exempt from taxation under this Code to a use not so exempt, that property shall be subject to taxation from the date of the purchase or conveyance.

35 **ILCS** 200/9-185.

App.3d 153 (1st Dist. 1985)); third, such party can not obtain exemption unless it presents clear and convincing evidence of conformity with all applicable statutory and common law requirements therefor (*id.*); fourth, the word "exclusively," when used in Section 200/15-65 and other tax exemption statutes, means "the primary purpose for which property is used and not any secondary or incidental purpose" (Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, 243 Ill. App.3d 186 (4th Dist. 1993)) and fifth, "statements of the agents of an institution and the wording of its governing documents evidencing an intention to [engage in exclusively exempt activity] do not relieve such an institution of the burden of proving that ... [it] actually and factually [engages in such activity]." Morton Temple Association v. Department of Revenue, 158 Ill. App.3d 794, 796 (3rd Dist. 1987). Therefore, "it is necessary to analyze the activities of the [applicant] in order to determine whether it is a charitable organization as it purports to be in its charter." *Id*.

In this case, the relevant exemption applies to "institutions of public charity." Our courts have long refused to apply this exemption absent suitable evidence that the property in question is owned by an "institution of public charity" and "exclusively used" for purposes which qualify as "charitable" within the meaning of Illinois law. Methodist Old People's Home v. Korzen, 39 Ill.2d 149, 156 (1968) (hereinafter "Korzen"). They have also ascribed to the following definition of "charity," originally articulated in Crerar v. Williams, 145 Ill. 625, 643 (1893):

> ... a charity is a gift to be applied consistently with existing laws, for the benefit of an indefinite number of persons, persuading them to an educational or religious conviction, for their general welfare - or in some way reducing the burdens of government.

The Illinois Supreme Court has effectuated this definition by observing that all "institutions of public charity" share the following "distinctive characteristics[:]"

1) they have no capital stock or shareholders;

2) they earn no profits or dividends, but rather, derive their funds mainly from public and private charity and hold such funds in trust for the objects and purposes expressed in their charters;

3) they dispense charity to all who need and apply for it;

4) they do not provide gain or profit in a private sense to any person connected with it; and,

5) they do not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses.

Korzen at 157.

Administrative notice of the Departmental determinations in case numbers 93-56-00066, 94-16-01497 and 96-16-00204 plus such notice of the Recommendation for Disposition in Departmental Docket Numbers 91-16-831, 832 and 833 establish that this applicant satisfies all of the elements necessary to qualify as an "institution of public charity" within the meaning of Section 200/15-65.[8] Such notice nevertheless fails to resolve the critical inquiry in this matter, which is whether the subject parcel was in exempt ownership during 1994.

Analysis of the ownership question begins with recognition of the following essential facts: (1) applicant is a corporation and therefore, legally distinct from both Menard MLP; (2) both Menard (as a corporation) and MLP (as a limited partnership) are separate legal entities unto themselves; (3) applicant owns 100% the capital stock in Menard, and therefore is the controlling entity therein; (4) Menard in turn controls MLP by virtue of its position as general partner, a status which entitles it to 99% of the distributions therefrom; (5) neither Menard nor MLP are the applicant herein; (6) applicant obtained title to the subject parcel via a quitclaim

8. For analysis of those elements, *see*, Korzen, *supra*.

deed dated April 23, 1994; and (7) applicant transferred title to MLP via a quitclaim deed dated June 29, 1994.

These facts are essential because neither Menard nor MLP satisfy the requirements for charitable status articulated in Korzen. Menard fails to qualify because of the capital stock it issued to applicant. Such stock establishes that Menard is a for-profit enterprise, and therefore inherently violates the first and second requirements for charitable status set forth in Korzen. MLP likewise violates the same requirements because its partners (both limited and general) are ostensibly required to make capital contributions.

The Certificate of Limited Partnership (Applicant Ex. No. 7) provides that 99% of the distributions from such contributions shall inure to Menard's pecuniary benefit. Moreover, the audit (Applicant Ex. No. 5) indicates that applicant formed the distributing entity, MLP, for purposes of rehabilitating the subject property and operating low-income rental units therein.

Applicant's controlling interest in Menard, coupled with the latter's controlling stake in MLP, allows the income from such rentals to flow from MLP to the applicant. Consequently, it stands to reason that MLP's primary function is operating the subject property in such a manner as to produce income for the applicant. Such a function is inherently commercial, and thus non-exempt, even where applicant applies any income derived to its beneficent purpose. People ex. rel. Baldwin v. Jessamine Withers Home, 312 Ill. 136 (1924); Turnverein "Lincoln" v. Board of Appeals of Cook County, 358 Ill. 135 (1934); Salvation Army v. Department of Revenue, 170 Ill. App.3d 336, 344 (2nd Dist. 1988). For this and all the aforestated reasons, I conclude that MLP, which held title to the subject property as of June 24, 1994, is not an "institution of public charity" within the meaning of Section 200/15-65. Therefore, the Department's determination that said property was not in exempt ownership should be affirmed.

One could attempt to defeat this conclusion by arguing that the subject parcel should be exempt for that period of the 1994 assessment year wherein applicant itself held title. Such a result is technically feasible under 35 **ILCS** 200/9-185.[9] Nevertheless, the record establishes that the subject parcel was in extreme disrepair, and thus, not suitable for any actual use (exempt or otherwise) from the date applicant took title, April 23, 1994, until the one on which it conveyed same to MLP. As such, the parcel did not satisfy the appropriate exempt use requirements during that time. *See*, Skil Corporation v. Korzen, 32 Ill.2d 249 (1965); Antioch Missionary Baptist Church v. Rosewell, 119 Ill. App.3d 981 (1st Dist. 1983); Comprehensive Training and Development Corporation v. County of Jackson, 261 Ill. App.3d 37 (5th Dist. 1994).

This same consideration, plus the fact that MLP does not qualify as an exempt owner serves to distinguish the present case from Weslin Properties v. Department of Revenue, 157 Ill. App.3d 580 (2nd Dist. 1987). There, the court held in favor of exempting a parcel that was being developed for eventual use a health-care facility. However, the court's overall conclusion was facilitated by the parties agreement that the appellant, which owned the property at issue, qualified as an "institution of public charity" under the relevant statute. Weslin Properties, *supra* at 584.

The preceding analysis demonstrates that MLP owned the subject property throughout the entire time it was undergoing renovations. Said analysis further divulges that one of MLP's two organizational purposes is bringing such renovations into fruition. However, unlike the Weslin Properties appellant, MLP does *not* satisfy the requirements for charitable status. For this reason, and because applicant itself (which does satisfy those requirements yet is legally distinct from MLP) did not actually own the subject property while it was being renovated, I

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9. For the text of this Section, *See*, footnote 7, *supra* at p.14.

must conclude that Weslin Properties does not provide authority for exempting said parcel during the renovations period.

One might also argue that, despite the above-detailed legal distinctions, practical business reality effectively equates applicant's controlling interest in Menard with a similar stake in MLP. The leading case on this topic is Southern Illinois University Foundation v. Booker, 98 Ill. App.3d 1062 (5th District, 1981) (hereinafter "Booker"). In that case, Southern Illinois University (hereinafter the "University") was legally prohibited from entering into long term loans, and therefore, could not practicably assume title to the subject property in its own name.

The University's Board of Trustees sought to remedy this situation by having the appellant Foundation, which was not subject to the above legal prohibition, assume title in its own name. The court found that the Foundation, a not-for-profit corporation in its own right, was not "readily separable from [the] University and, consequently, the State." Booker at 1070. It based this conclusion on numerous factors, including reciprocal resolutions stating "that upon retirement of the mortgage, the Foundation will reconvey the property as improved to the University without further cost to the University, and that the University will continue to operate the project as a student housing facility." Booker at 1066.

The court proceeded to reason that:

> ... Although the Foundation is a corporate entity legally distinct from that of the University, the function of one is expressly "to promote the interests and welfare" of the other, and some of the highest officers of the University are required, under the bylaws of the Foundation, to serve in some of the highest positions of the Foundation. Thus, a further reality of ownership of this property is the identification to a certain extent between the holder of bare legal title and the State as holder of the entire equitable interest. In this case, then not only does the Foundation hold but naked legal title to property controlled and enjoyed by the State, but a certain identity exists as well between the holder of naked legal title and the State. For these reasons, we hold the property exempt from taxation as property belonging to the State.

Booker at 1070-1071.

This case is distinguishable from Booker in that neither the nominal title-holder (MLP) nor the entity that controls it (Menard) are not-for profit corporations. Rather, the preceding analysis demonstrates they are for-profit entities, and therefore, do not qualify as exempt owners under the applicable statute. Moreover, the record is completely devoid of any evidence that applicant transferred title to MLP to avoid any sort of legal prohibition on long-term indebtedness, or, that MLP is obligated to reconvey the subject property to applicant when any such indebtedness is retired. Absent such evidence, I must conclude that applicant conveyed such property to MLP as part of a non-exempt arm's length business transaction in commercial real estate. Based on these distinctions, I conclude that the principles articulated in Booker are inapplicable herein. Therefore, I recommend that the Department's determination denying the subject property exemption from 1994 real estate taxes be affirmed.

WHEREFORE, for all the above-stated reasons, it is my recommendation that Cook County Parcel Index Number 16-08-402-009 not be exempt from 1994 real estate taxes.

07/08/98
Date

Alan I. Marcus,
Administrative Law Judge